



Kentucky Sales Tax Facts

Vol. 3, No. 4 Winter 1998

Each edition of the Kentucky Revenue Cabinet's (KRC) quarterly sales and use tax newsletter seeks to provide taxpayers with assistance in the filing of returns and the application of sales tax laws and regulations. The contents of this informational bulletin shall not take precedence over any existing laws or regulations of the commonwealth. Your comments and suggestions are welcomed. Please help us serve you better.

NOTICE TO FIRST-TIME AND ANNUAL FILERS

Below are a few guidelines for taxpayers just beginning to file sales and use tax returns and for those who file on an infrequent basis.



- (1) Even if no tax is due, the sales and use tax return **must** be filed. If there is no sales activity for the reporting period, write zero on lines 1, 20, and 23 of the return, and sign in the signature block.
- (2) The Kentucky Sales and Use Tax Return (Form 51A102) is not available for reproduction because it is a scannable format that cannot be easily reproduced. **Businesses receiving this type of sales and use tax return should file the return supplied by KRC.** If a preprinted form is not received or is misplaced, please contact the Sales and Use Tax Section or a local taxpayer service center to request a replacement return.
- (3) Any figure placed on line 20 on the front side of the return must be itemized on lines 2–19 on the reverse side of the return. When a business fails to properly itemize deductions, delays in processing occur and billings for additional tax due **may** result.

Kentucky Sales Tax Facts Annual Index—Winter 1997—Fall 1998



Each edition of the newsletter is enclosed with the quarterly sales and use tax return mailings. The index below provides a listing of topics covered in the last four issues. Businesses may contact the Sales and Use Tax Section for copies of back issues with topics of interest to them.

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Questions Presented by Taxpayers and Briefly Answered in *Sales Tax Facts*

Volume 3, Number 1, Spring 1998: Out-of-state nonregistered sellers using third parties for installation and repair work in Kentucky; multijurisdictional resale certificates are not acceptable (**Until now! See next article of this issue**); business utility bills and local school tax; vitamin E is not an exempt medicine.

Multijurisdictional Resale Certificate is now Acceptable in Kentucky

KRC has authorized vendors to accept the multijurisdictional resale certificate as provided by the Multistate Tax Commission (*Uniform Sales and Use Tax Certificate—Multijurisdiction*).

The new certificate **must** have a revision date of 10/7/98 or after to be acceptable. Other conditions for acceptance in Kentucky are as follows:

- (1) The certificate may not be used to claim a resale exemption for the purchase of a taxable service.
- (2) The certificate is valid only for use as a resale certificate according to the provisions of good faith specified in KRS 139.270.
- (3) The use of this certificate by the purchaser constitutes the issuance of a blanket certificate in accordance with Regulation 103 KAR 31:111.

For periods prior to 10/7/98, sellers must maintain a Kentucky Resale Certificate (Form 51A105) to document sales for resale. The new multijurisdictional certificate is available over the internet at www.mtc.gov. You may also contact the Multistate Tax Commission, 444 North Capitol Street, NW, Suite 425, Washington, D.C. 20001 or call (202) 624-8699, fax (202) 624-8819.

Internet Tax Freedom Act



During the current holiday season, online retail sales are expected to increase by 300 percent. By the year 2002, US Internet commerce revenue is projected to reach \$344 billion. This explosion in electronic commerce is producing many new benefits to the consumer as well as creating new issues regarding taxation and interstate commerce.

In early October, Congress passed legislation that seeks to establish a national policy concerning state and local government taxation of interstate commerce on the Internet and interactive computer services. This Act imposes a three-year ban on the taxation of charges made for Internet access or online services. However, purchases of tangible personal property for use in this state are still subject to the 6 percent Kentucky sales and use tax based upon the purchase price of the product sold. If an out-of-state retailer makes sales via the Internet for delivery and use in Kentucky, then the seller is required to collect the 6 percent tax if the company is engaged in business in this state as specified in KRS 139.340. If the out-of-state seller is not required to collect the tax on such transactions, the purchaser is liable for the 6 percent Kentucky use tax (KRS 139.330). As a matter of customer courtesy, many out-of-state retailers voluntarily register to collect the tax from their customers.

Another provision of the Internet Tax Freedom Act is to establish a commission which will review and make recommendations on issues relating to the electronic commerce arena such as interstate commerce, telecommunication services, and the collection of sales and use taxes on in-state purchases from out-of-state retailers.

Fabrication, Installation, and Repair Labor

According to KRS 139.130, *sales price* includes any services which are part of a retail sale including the cost of materials used, labor, or service cost. However, *sales price* does not include the charges for labor or services used in installing or applying the property sold. An understanding of this meaning of *sales price* will help clarify what types of labor charges are subject to sales and use tax.

Fabrication labor (Regulation 103 KAR 28:030) is labor that results in the creation or production of tangible personal property that remains tangible personal property. Examples of fabrication labor are bending a metal rod into a new shape, engraving a trophy with an inscription or drilling holes in a bowling ball. According to Kentucky sales and use tax law, *sale* includes the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration. Furthermore, the transaction is still considered a sale even if the consumer directly or indirectly furnishes the materials used. Therefore, fabrication labor is subject to sales and use tax.

Installation labor (Regulation 103 KAR 30:180) generally refers to the installation of tangible personal property onto other tangible personal property. Placing a battery in a car or installing a truck bed liner are examples of installation labor. **Separately stated** charges for the labor of installing or applying property sold are not subject to sales and use tax.

However, a retailer's charges for assembling property such as furniture, bicycles, lawn mowers, etc., are subject to sales and use tax as a service that is part of the sale of the property.

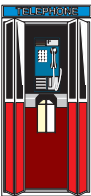
Repair labor (Regulation 103 KAR 27:150) is labor that returns property to its original condition. Repairers are generally considered to be retailers of the parts and materials provided with repair work. If a repairer separately states the repair labor from the taxable price of parts and materials, then these labor charges are exempt from the tax.



In all cases, if an exempt labor charge is not separately stated on the customer's invoice from the selling price of the property, the presumption is that the entire charge represents the sales price of the property and tax applies to the total amount.

Receipts from Public Pay Telephones

A frequent question posed to KRC concerns the taxability of receipts collected in public pay telephones in Kentucky. These monies are considered part of gross receipts subject to sales tax as defined in KRS 139.100(2)(b), which defines *retail sale* to include the furnishing of intrastate telephonic and telegraphic communications. Since it is impossible to know if the pay telephone was used for intrastate or interstate calls, it is presumed that the use was for intrastate calls subject to Kentucky sales tax.



A retailer may own the pay telephone at his physical location. In this case, he is responsible for collecting and remitting the sales tax. A retailer may also lease telephones from a third party. In this case, the retailer and the third party must decide whose responsibility it is to remit the tax. If the third party is responsible for collecting and paying the sales tax, the tax must be paid on the gross receipts **before** the commission is paid to the retailer.

The purchase of pay telephones for use in providing telephone service to the public is subject to sales and use tax. However, a business purchasing telephone equipment for lease may purchase the property exempt from sales and use tax by issuing a valid Resale Certificate (Form 51A105) to the telephone vendor. The lessor of pay telephones is responsible for collecting tax on each lease payment.

Properly collecting and paying sales tax is an important concern of businesses that have pay telephones on their premises or are considering going into the business of leasing pay phones. The money collected from the use of the phones is subject to Kentucky sales tax.

This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the commonwealth. To submit additional questions or suggestions for future topics, please write to: **Kentucky Sales Tax Facts**, Sales and Use Tax Section, Station 53, P.O. Box 181, Frankfort, Kentucky 40602-0181 or call (502) 564-5170, fax (502) 564-2041, web site <http://www.state.ky.us/agencies/revenue>.

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